

THE DAILY HERALD

Will be for sale Daily at the Following Places:
 T. G. THURM.....Fort street
 J. H. SOPER.....Merchant street
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 Price 5 Cents.

SATURDAY, DECEMBER 25, 1886.

LOCAL NEWS.

The holiday trade was lively yesterday and last evening.

Mr. Congdon has savory meals sent to his cell from a leading restaurant.

The streets were lively with Christmas buyers and sight-seers last night.

All the military are summoned to attend parade at Kaumakapili church on Sunday.

E. L. Parker, arrested last week for trying to run away from his debts, has been released.

Panorama of the volcano on Queen street will be open all this day and evening.

The Club House Dining Rooms will have a Christmas dinner from noon till eight this evening.

The Bulletin got out a neat half sheet Christmas supplement in blue ink last evening.

Messrs. Hollister & Co. and Mr. J. W. Hingley have the thanks of the Herald for Christmas favors.

The Y. M. C. A. is going to give a jolly good entertainment on Tuesday evening for the benefit of its funds.

The Reformatory School band was serenading the houses of Palama residents last night, filling that breezy suburb with excellent music.

Captain Ashford issues an order to the Honolulu Rifles to assemble at their Armory Sunday morning at 8:30 to attend regimental church parade.

Mr. Levey's saleroom overflowed its throng out to the street last night, on the occasion of his final Christmas sale, and a large variety of goods, some of a rich class, was disposed of.

The steamer Kilaua Hou brings news of rainy weather in the Hilo district, and dry, fine weather in Hamakua; also southwest winds and a southerly sea on the Hawaii coast.

Mr. Kanoa, Jr., accompanies the Samoan embassy as interpreter, and the whole party will number seven or eight, besides the Minister Plenipotentiary and Military guard of ten or twelve.

Christmas Concert.

Following is the musical programme of the Christmas concert to be given this Saturday afternoon next at 2:30 p. m. at Emma Square:

ROYAL HAWAIIAN BAND.
 March—Glory.....Michiels
 Polka Medley—Comic Fantasia.....Riviere
 Waltz—Jubilee.....Cootie
 REFORMATORY SCHOOL BAND.
 Waltz Medley—Christmas.....Burger
 Polka Medley—New Year.....Burger
 March Medley—Vacation.....Burger
 KAWAIAHAWO CHURCH CHOIR.
 Chorus.....Lipolipo ka Wai o Elele
 Chorus.....Aia Hiki Mai
 COMBINED BAND.
 March—Jubilee.....Burger
 Waltz—Lei Aloha.....Cotlin
 Polka—Skating Rink.....Farbach
 March—Ipo-Launc.....Burger
 Hawaii Pono.

Christmas Boxes.

Yesterday Mr. J. A. Hassinger, Chief Clerk in the Interior Department, was the recipient of several handsome presents. The principal one was an elegant card basket of silver with blue glass bottom, bearing figures in white of children enjoying summer, which was the gift of Col. J. H. Boyd, Second Assistant Clerk. A beautiful kukui nut watch guard charm, with an inlaid gold monogram, was presented to his chief by Mr. J. S. Smithies, Third Assistant Clerk. Mr. Hassinger on December 4th received from the Interior Department staff, in honor of his forty-ninth birthday, a handsome silver water set, comprising an ice pitcher pivoted in a frame, a gold-lined and a plain silver goblet. It must be peculiarly gratifying to the chief of such an important staff, who is a strict disciplinarian, to have such warmhearted appreciation from his staff as these tributes evince.

Mr. Ward S. Bartlett, manager of the Hawaiian Hotel, was last evening presented with a handsome gold-headed cane by the staff of that establishment. It is suitably inscribed to the recipient, and engraved with pictures of the Hotel, the Pali and Diamond Head.

SIDE LIGHTS.

The "Pink of Key West" at McCarthy's.

Mr. Wolters, manager of the Royal Saloon, was busy last night preparing a Christmas tree, after the German fashion. It will be covered with fruit, cakes and candles; will be on view behind the bar at eight in the morning, and lighted up precisely at eight in the evening. The manager will be glad to see his friends on time, as the candles are short-lived though brilliant.

THE HABEAS CORPUS CASE.

Petitioner Remanded into Custody and Full Text of the Chief Justice's Decision.

Following is the full text of the decision of the Chief Justice, on the petition of J. H. Congdon for release from the custody of the Marshal:

Supreme Court of the Hawaiian Islands. Before Chief Justice Judd, at Chambers.

The petitioner on the 20th inst. was sued by one Ackerman, master of the schooner Geo. C. Perkins, who claims \$590.63 for freight and primeage on 250 hogs shipped on board this vessel at San Francisco for Honolulu, by Congdon, at his risk according to the bill of lading, and alleges that the freight was due and payable at Honolulu on the 18th of October, 1886, when the hogs were delivered to him except such as had died on the passage. On the 22nd the plaintiff, by F. A. Schaefer, his attorney in fact, presented a petition, entitled in the above action, to a Justice of this Court, alleging that the said Ackerman, as master of the said G. C. Perkins, had brought a suit against said Congdon to recover certain amounts for freight upon the carriage of live stock, which became due and payable at Honolulu on the arrival of the said vessel on the day of —, A. D. 1886; that this petitioner has good reason to believe and alleges upon information and belief that said J. H. Congdon is about to quit this Kingdom; therefore he prays that process may issue for the arrest and detention of said J. H. Congdon until he shall have entered into security with sufficient sureties to abide the result of said suit and pay such judgment as shall be rendered thereon. The instrument is as follows:

"Hawaiian Islands, Oahu, S. S. Personally appeared F. A. Schaefer and made oath that the matters above alleged are true to the best of his knowledge and belief. Subscribed and sworn, etc.

"F. A. SCHAEFER."
 The Justice applied to allowed the process of arrest to issue on the filing of a bond in the sum of \$500, conditioned to indemnify said Congdon in case said plaintiff fails to maintain his suit, and the arrest was made on the same day. The petitioner on the next day applied to me in due form for a writ of habeas corpus, which was issued and returned the same day.

I wish to remark in limine that though persons committed on mesne process in any civil action in which they were liable to be arrested and imprisoned, except when excessive and unreasonable bail is required, are not entitled as of right to demand and prosecute the writ of habeas corpus, a Justice of the Supreme Court is allowed by a subsequent section of the act the discretionary power to issue a writ of habeas corpus ad subjiciendum where it is not demandable of right, and thereupon to admit to bail or to discharge the petitioner as law and justice may require. This gives me, at my discretion, authority to review the acts by which the arrest on mesne process in a civil action was obtained.

I still think as intimated at the argument, that the best course to pursue would be to apply to the Justice who authorized the writ, on a motion to dissolve the attachment and discharge the respondent from custody. This would avoid the unseemly clashing of authority which might occur. This was the course followed in the case of the King vs. Huntley, 2 Hawaiian, 457.

One of the grounds for claiming that the petitioner should be discharged is that the bond tendered by the plaintiff in asking for the process of arrest is not sealed with the seals of the principal and surety. I find that the instrument is in substance a bond, and on the authority of Mann vs. Campbell, 4 Hawaiian 459, I hold that a seal is not necessary. The common law definition of a bond is an obligation to pay money and it must be sealed, but, as repeatedly laid down in this Court, the common law is not in force in this Kingdom, any further than its reasonings and principles have been adopted. There is no statute here defining a bond to be a sealed instrument, or making a seal essential to its validity any more than to a conveyance of law. The distinction between sealed and unsealed instruments is not preserved in our code, and I know of no reason why an obligation which purports to bind the obligors to pay a certain sum of money to the obligee on the contingency named should be defeated because the artificial and formal act of affixing a wafer or making a scroll after the names of the obligors has been omitted. By all the authorities, moreover, the omission can be supplied.

A more serious objection is that the jurat is insufficient. It is urged upon me that the oath should be positive as to the facts set forth and not, as in this case, that they are true to the best of the knowledge and belief of the affiant. Rule 27 of the Supreme Court requires that in equity and admiralty all facts should be verified absolutely and matters of belief and recollection by a separate clause.

Section 1099 of the Civil Code prescribes that "every civil action hereafter to be tried in any of the courts of record in this Kingdom shall be commenced by petition, which petition shall be verified by the oath of the

plaintiff or someone on his behalf, deposing to the best of his knowledge and belief." The 953rd section of the code which authorizes the arrest of a debtor, prescribes that the complaint shall be verified by the oath of the plaintiff or someone on his behalf. In this connection I must consider another objection made that the allegation, that plaintiff "has good reason to believe and alleges upon information and belief" that said J. H. Congdon is about to quit the Kingdom, is insufficient, as it is not a positive averment that Congdon is about to quit the Kingdom. I am at a loss to perceive how a matter which is an intention merely of another person can be otherwise alleged truthfully. "Being about to quit the Kingdom" means that there is an intention to quit the Kingdom which is about being carried out. This may be locked entirely in the breast of the party so intending and only his acts and words which indicate this may be known to the plaintiff. This is a purely statutory matter, and, as Chief Justice Allen says in Huntley's case, when the statute is followed the allowance of the writ is a matter of right. Our statute does not require, as the Canadian statute, that it must be alleged that the plaintiff has reason to believe and verily believes, for reasons specially stated in the affidavit, that the defendant is about to quit the Kingdom. It may be that the statute should require that the reasons which have operated to induce the belief that the defendant is about to quit the Kingdom should be specially stated in the complaint in order that the Court may be able to determine whether the belief is well founded or not, but the simple answer to be made in this case is that our law does not require this, and I am of the opinion that an allegation that the plaintiff has good reason to believe and alleges upon information and belief that the defendant is about to quit the Kingdom, verified by oath in the same way, that is, that the facts stated are true to the best of the affiant's information and belief complies with the statute and is sufficient.

The remaining point is that there is no proper allegation of a debt due and owing, or that the defendant is about to quit the kingdom with the intent to evade the payment of his debts or, what would be nearly equivalent, without having made provision for the payment of the debt. As regards the point that no debt is alleged to be due, I think that as this is a petition for the arrest of the defendant, auxiliary to the former suit between the parties, the former declaration was presumably referred to by the justice who granted the warrant. This states most unequivocally that the debt for freight became due on the arrival at Honolulu of the vessel which carried the petitioner's live stock. The petition for process of arrest sufficiently states it as well.

A critical study of the 953rd section of the Civil Code is necessary in order to decide whether the last point above made is tenable, that is, whether it is essential to allege that the defendant is about to quit the kingdom with the intention to evade the payment of the debt. The law reads: "Upon a complaint verified by the oath of the plaintiff * * * stating that a defendant" has, etc.—that is, this presupposes a suit by a plaintiff against a defendant, and the process of arrest may be asked for contemporaneously with the complaint, or it may be, as in this case, by a separate complaint.

Now what must be alleged to entitle the plaintiff to ask for a warrant? I find that the statute requires one of three circumstances to exist: 1, that he seeks to evade the payment of the debt in a fraudulent manner; 2, that he seeks to evade the payment of the debt, or liability to plaintiff, either by secreting his property, or intending to transfer it to a third party, or is about to remove it out of the jurisdiction of the Court; and, 3, that the defendant is about to quit the Kingdom. The statute does not say that the defendant must be alleged to seek to evade the payment of his debt to the plaintiff, by leaving the Kingdom. The clause, "or is about to quit the Kingdom," is not coupled with any such antecedents. It stands alone as one of the causes upon which a warrant of arrest for a debtor may issue.

There is much force in the argument made that the leaving of the Kingdom by a defendant may not imperil the collection of the plaintiff's claim. This is particularly true of residents here possessed of landed property. Their presence in Court is not necessary to the enforcement of claims against them. It may be that the changed circumstances of this country since this law was enacted make it desirable that this process should be applied only to those who seek by quitting the Kingdom to evade the payment of their debts. But these are considerations to be addressed to the Legislature. I must administer the law as I find it, and, the complaint setting forth that the plaintiff has good reason to believe and so alleges that the defendant is about to quit the Kingdom, the statute is complied with and thus far only can I enquire on habeas corpus into this matter. The prayer of the petitioner is refused and he is remanded into custody.

A. F. JUDD,
 Chief Justice Supreme Court.
 Ashford & Ashford, P. Neumann and J. T. Dare for petitioner; F. M. Hatch for the Marshal.
 Honolulu, December 24th, 1886.

Shipping Intelligence.

ARRIVALS.

FRIDAY, DEC. 24.
 Steamer Kinan from Maui and Hawaii
 Steamer Waiata from Hamakua
 Steamer W. G. Hall from Maui and Hawaii
 Steamer Waimanalo from Waimanalo
 Steamer Kaukaeo from Kohala
 Steamer Leahi from Hamakua
 Steamer Sarah & Eliza from Koolau

DEPARTURES.

FRIDAY, DEC. 24.
 Steamer Nettie Merrill for Hawaii

VESSELS LEAVING TO-DAY.

Ger bark Pacific for Germany

PASSENGERS.

From Hamakua, per steamer Kinan, Friday, Dec. 24—J. Viora, S. Harrison, A. Harrison, F. Harrison, Chun Lung, C. Along, Mrs. J. Nawahi, child and servant, Yim Quon, R. H. Atkins, A. Johnson, P. N. Ma-kee, W. H. Cornwell, Dr. Iwai, wife and child and about 125 deck.
 From Hamakua, per steamer Waiata, Friday, Dec. 24—N. Rice and R. T. Walker.
 From Maui and Hawaii, per steamer W. G. Hall, Friday, Dec. 24—J. Campbell, wife and a children, D. Speckman and son, J. Dawling, A. Kakaulele, Mrs. M. Maipinepine and about 103 deck.

Vessels in Port from Foreign Ports.

Ger bark Pacific, Offnaus, from Bremen, Germany
 Am bark Geo. C. Perkins, Ackerman, from San Francisco
 Hark schr Jennie Walker, Anderson, from Fanning's Island
 Britne Mary Winkelman, Beckus, from San Francisco
 Am bark Forest Queen from San Francisco
 Britne Wrestler, Schanane, from Newcastle, N. S. W.
 Brit Ceylon, from San Francisco
 Brit Nellie May, Astoria, from N. G. N. S. W.
 Haw S. S. Australia, Houdlett, from San Francisco
 Am bark Saragoe, from New York
 Britne W. H. Diamond from San Francisco
 Am ship Mercury from Newcastle, N. S. W.
 Britne Eureka from San Francisco
 Brit Star of Devon from Fanning's Island
 Britne Clara Speckels from San Francisco
 Britne Ella from San Francisco
 Britne John Smith from Newcastle, N. S. W.

Vessels Expected from Foreign Ports.

Am brigine Salina Blake, from San Francisco, due, Am bark Martha Davis, F. M. Benson, sailed from Boston, August 7th, due December 10-20. To C. Brewer & Co.
 The bark Martha Fisher, to have sailed from Liverpool August 25.
 Brit bark Glenahar, Rolleston, from Liverpool, due January 15-30, 1887. T. H. Davies & Co. agents.
 Am bark S. N. Castle, Hubbard, from Fort Towns-land, W. T., due December 15-30. Castle & Cooke, agents.
 Brit bark Lady Lampong, Marston, from Newcastle, due February 10-20. To Brewer & Co. agents.
 Ger bark Hydra, from Hongkong, due December 1-15.
 Ger bark Hercules, from Liverpool, due February 20-30, 1887. To Schaefer & Co. agents.
 S. S. Alameda, Morse, from the Colonies for San Francisco, due December 15.
 S. S. Zealandia, from San Francisco for the Colonies, December 25.
 Am schr W. S. Bowen, Paul, from San Francisco, due December 20-30.
 Steamer Explorer from Apia, due December 24-31.
 S. S. Mariposa, Hayward, from the Colonies due January 14.

NOTES.

The Jennie Walker's departure has been postponed until next Monday or Tuesday when she will sail for Fanning's Island.
 The steamer W. G. Hall arrived last evening with 1,520 bags of sugar, 243 bags of awa, 107 bags of coffee, 88 packages of hides, 207 packages of sundries, 30 head of cattle, 1 horse and 40 pigs.
 The steamer Kinan brought 1,573 bags of sugar, 16 bags of ginger, 300 hides, 1 horse and 100 packages of sundries.
 The steamer Waiata brought 1,413 bags of sugar and a horse.
 The steamer Kilaua Hou brought 2,200 bags of sugar, 50 hides and a calves.

New Advertisements.

L U A U.
 —AT THE—

MERCHANTS EXCHANGE.

Cor. King and Nuuanu Streets.

XMAS DAY.

Roast Sucking Pig. Old English Plum Pudding, Chicken Salad. Ham and Beef Sandwiches.

Come one, Come all. You are Welcome at the

MERCHANT'S EXCHANGE SALOON.

THERE WILL BE AN
 Extra Xmas Bill of Fare
 —AT THE—

CLUB HOUSE

DINING ROOMS,
 Lincoln Block. - - King Street.

Christmas Cheer in Great Variety. Full and Plenty for All.

Dinner from 12 o'clock noon until 8 P. M.

Public Entertainment

Tableaux, Pantomime, Singing, Etc., Etc.

AT Y. M. C. A. HALL,
 TUESDAY, DECEMBER 28.

Commencing at 7:30 o'clock.

For the Benefit of the Association.

ADMISSION 50 Cents.

ifles Attention!

Company Order, No. —.

The Honolulu Rifles will assemble at their armory at 8:30 a. m. on Sunday, December 26th, for Regimental Church Parade, pursuant to General Orders.

White overalls, white tunics, and forage caps will be worn.

VOLNEY V. ASHFORD,
 Captain Commanding.

New Advertisements.

JUST RECEIV'D

A small invoice of

CIGARS

Imported direct from Havana.

C. O. BERGER.

A CARD.

Messrs. H. MAY & CO., would respectfully notify their patrons and the public in general that their store will not be opened on Christmas day.

MINCE PIES!

Those Delicious and Rich Christmas and New Year's

MINCE PIES

Enjoying a twenty years' reputation, will be ready for sale from THURSDAY, December 23rd, at

F. HORN'S.

— ALSO —

CHRISTMAS AND NEW YEAR'S CAKE

Of all descriptions, decorated in HORN'S well known artistic style, from \$1.00 to \$5.00, or at 50 cents per pound, at the

Pioneer Steam Candy Factory & Bakery.

Hotel St., bet. Nuuanu and Fort St.
 Both Telephones No. 74.

J. H. SOPER

Invites attention to the following list of

HOLIDAY GOODS

Just received per Oceanic steamship Australia—

CHILDREN'S BOOKS.

Chatterbox 1886, beautifully bound.
 Frank Leslie's Chatterbox, do.
 Our Hero General U. S. Grant—Where, When and How He Fought.
 Nursery A. B. C., Picture, Story, Magic, Dream and Fortune Telling Books, etc.

CARDS AND PICTURES.

CHRISTMAS CARDS, beautiful designs, including Raphael Tuck & Sons' Artistic Series.

Large Scrap Pictures, comprising the Lord Mayor's Procession, The Queen Returning from a Review, and other grand subjects.

Small Shell Plaques, Children's Toy Blocks, Games, etc., etc.

STANDARD BOOKS.

Family Bibles with Registers.
 Hill's Manual.
 Secrets of Success in Business.
 Golden Key to Success.
 Successful Housekeeping.
 Ben Hur.
 Boots and Saddles.
 And a large variety of popular works.

GOLD PENS AND HOLDERS

In large supply and variety: Diaries, Pocket Books, Blank Books, etc., etc.

J. H. SOPER,

Bookseller, Stationer and News Agent.
 Gazette Block, Merchant Street.

New Goods!

New Goods per Mariposa.

AUGUSTUS L. SMITH

Has received an excellent assortment of CHRISTMAS GOODS, among which are Christmas cards, plain and fringed, ranging in price from 5 cents upwards; Dolls in great variety, large and small; Doll Carriages, Transparent slates, Writing desks, Dominoes, Checkers, Perfume cases, Christmas candles, Candle holders, Tree ornaments, Trumpets, Tops, Paint boxes, Purses, Papeteries, Etc. Etc., Etc., Etc.

NEATEST JOB PRINTING

Executed to order at this office.

WOLFE & CO.,

No. 66 HOTEL STREET.

Have Received by Late Arrivals

American and English Jams and Jellies, Table and Pie Fruit, Star Hams, Oxford Sausages, Curried Fowl, Kipperd Herrings, Preserved Bloaters, Fried Eel, Flindon Haddock, Plum Pudding, French and American Peas, Crackers, Cakes, Mackenzie's Fine Biscuits, Etc.

Also a large assortment of Candies and Nuts. Orders will receive careful attention and prompt delivery guaranteed.

P. O. Box 120 Bell Telephone No. 348. Mutual, No. 149.

General Advertisements.

Santa Claus' Headquarters

106 FORT STREET.

Is replete with its usual variety of attractive and seasonable Novelties for young and old.

—Consisting in part of—

Miscellaneous Art & Presentation Books

—INCLUDING—

A second invoice of Mrs. Sinclair's "Indigenous Flowers of the Hawaiian Islands," Floral and handy volume. Poets, juvenile books, Office and Pocket Diaries for 1887.

New Style Papeteries and Tablets.

Portfolios, Plush Goods, Ladies' and Gents' Traveling Cases, Necessaries, Work Baskets, fitted, Gold Pencils, Pens and Holders, Charms, Stylized Graph Pens, Christmas and New Years Cards—with more to follow.

NEW TOYS AND GAMES

For the Young Folks

Dolls and Doll Sundries.

Heads, Bodies, Arms, Shoes, Hats, Jewelry, Etc.

Wire Beds and Mattresses, Doll's Carrriage, Chair and Tables, Wagons, Barrows, Skikes, Velocipedes, Tricycles, Rocking Horses, Shoo-Bys.

RUBBER GOODS.

Dolls, Rattles, Animals, Balls, Etc., Etc.

Croquet Sets—Asst'd. Grades.

Together with a variety of other articles which must be seen to be appreciated.

Orders respectfully solicited and filled with care.

THOS. G. THURM.

BOOKSELLER AND STATIONER,

106 Fort Street.

MINCE PIES!

—On sale at the—

Club House Dining Rooms,

King Street.

MINCE PIES

Made from the Celebrated recipe of Messrs. Meller & Halbe.

Crystal Soda Works.

—MANUFACTURERS OF—

SODA WATER,

GINGER ALE,

FLORIDA LEMONADE,

Aerated Waters of All Kinds,

Fruit Syrups and Essences.

Our Goods are acknowledged the BEST. NO CORKS

WE USE PATENT STOPPERS

In all our Bottles.

We invite particular attention to our Patent Filter, recently introduced, by which all waters used in our manufactures is absolutely freed from all impurities.

—We deliver our Goods free of charge to all parts of the city.

Careful attention paid to Islands Orders. Address

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